

## **NON-PARENT CUSTODY**

*(This outline includes both "contested" and "un-contested" instructions.)*

Ignorance of the law excuses no man: Not that all men know the law, but because 'tis an excuse every man will plead, and no man can tell how to refute him.

**John Selden**  
*English antiquarian & jurist*

As a *Pro Se* Litigant you are representing yourself and therefore are responsible for all documents you file with the Court or present to the Judge. Please read all documents and instructions carefully. If you need assistance understanding forms or procedures, the Court Facilitator may review forms you have prepared yourself, answer questions, or help you with procedures.

- **THE COURT FACILITATOR CANNOT GIVE LEGAL ADVICE.**
- The Court Facilitator does not represent you and may also assist the other party.
- There is a \$40 (cash only) fee per one hour appointment, payable to the Island County Superior Court Clerk before your appointment.
- Walk-in hours are Wednesdays between the hours of 11 a.m. and 4 p.m., 15 minutes per person.
- To schedule an appointment call **(360) 678-7981** or email **d.mehlhaff@co.island.wa.us**

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1. **Obtain and prepare the necessary forms.** You may purchase a packet of forms from the Island County Superior Court Clerk or you may download forms for free at the following websites:

<b>www.courts.wa.gov/forms</b>	(Standardized Washington State Forms)
<b>www.islandcounty.net/superiorcourt</b>	(Island County Local Court Rules and Forms)

2. **To start a *Non-Parent Custody* case, the following documents must be completed, signed, and filed:**

_____ <b>Non-Parent Custody Petition</b>	<b>FL Non-Parent 401</b>
_____ <b>Summons: Notice about Non-Parent Custody Petition</b>	<b>FL Non-Parent 400</b>
_____ <b>Confidential Information Form</b>	<b>FL All Family 001</b>
_____ <b>Attachment to Confidential Information Form</b> <i>(for additional parties or children)</i>	<b>FL All Family 002</b>
_____ <b>Declaration of: _____ (Name) (see details below)</b>	<b>FL All Family 135</b>
_____ <b>Agreement to Join Petition (Joinder) (for each parent in agreement)</b>	<b>FL All Family 119</b>

**Note:** When you are completing your captions on each form, the person or persons requesting custody are the “Petitioner(s)” and the other parties are the “Respondent(s)”. Both the mother(s) and the father(s) of the children for whom you are requesting custody must be listed as Respondents (unless one parent is deceased).

Respondents who are in agreement must sign the **Agreement to Join Petition** (Joinder).

If addressing child support and/or a residential schedule (other than what is in the Petition) you must complete:

\_\_\_\_\_ **Child Support Worksheets**

**WSCSS Worksheets**

\_\_\_\_\_ **Residential Schedule (Non-Parent Custody) (Proposed)**

**FL Non-Parent 405**

3. **IMPORTANT.** In your **Declaration** and your **Non-Parent Custody Petition** (Section 5), you must explain in detail specific facts, incidents, and dates that establish the following information:

- (a) That the child is not in physical custody of one of its parents **and/or** that neither parent is a suitable custodian for the child; **also:**
- (b) The parents are unfit or that placement with either parent would result in actual detriment (harm) to the child’s growth and development.

**If these facts are not set forth in the Declaration with sufficient information and completeness, the court will deny your Non-Parent Custody Petition for lack of adequate cause and will dismiss your Petition. Even if one of the parents joins in your Petition, you must still establish the required information.**

It is very important you provide the Judge with the complete story in your **Declaration**. This is crucial information the Judge must have in order to grant your **Non-Parent Custody Petition**. You might also want to file **Declarations** written by other people who have information which supports your case. Use the **Declaration of (Name)** \_\_\_\_\_ (FL All Family 135) form.

**REMEMBER. You have the burden of proof to show why the child or children should be with you and not with the parents.** When you file your declarations, include reports or other documents (such as police, CPS, or school reports) that support your case.

If you want to address visitation, **Non-Parent Custody Petition** (Section 7) should be completed or you may complete a separate “proposed” **Residential Schedule (Non-Parent Custody)** (FL Non-Parent 405). If addressing child support a completed **Child Support Worksheet (WSCSS Worksheets)** must also be filed.

- 4. **Make 3 copies of all the completed documents, except for the Confidential Information Form and Attachment to Confidential Information.** The Superior Court Clerk’s office will keep the original documents for your court file; you will need a set of copies for yourself and another set to serve each of the other parties. It is important to keep a copy of these documents, you will need to refer to them when you prepare documents for your final Hearing..
- 5. **File the original documents (Non-Parent Custody Petition, Summons, Declarations, Confidential Information Form and Attachment to Confidential Information) with the Island County Superior Court Clerk in Coupeville** (101 NE Sixth Street). If a **Residential Schedule (Non-Parent Custody)** and/or **Child Support Worksheets** are completed they should be added at this time. The filing fee is payable only in cash, money order, or cashier’s check; the Superior Court Clerk will inform you of the current fee amount. The fee may be waived in some cases. The forms necessary for obtaining a fee waiver are available on the State website or at Island County Superior Court Administration. (**Note:** If you obtain a fee waiver to file your documents, the Court Facilitator fees will also be waived.)

6. **Serve each of the other parties (Respondents) with a copy of all the documents, except the Confidential Information Form and Attachment to Confidential Information.** If either party (Respondent) has signed the **Agreement to Join (Joinder)** personal service does not need to be completed for that person. If an **Agreement to Join** has not been signed, personal service must be completed by a person who is over the age of 18, a United States citizen, and not involved in the case. (**Note:** You may not complete the personal service; it must be by a third party.) The person completing service must complete a:

**Proof of Personal Service**

**FL All Family 101**

**Proof of Personal Service is very important;** all documents being served must be noted along with the date, time, and location service is completed. Make a copy and file the original **Proof of Personal Service** at the Superior Court Clerk's office.

The Island County Sheriff's office may serve the documents for a fee if the other party resides in Island County. If the other party does not reside in Island County, contact the Sheriff's office, or a Process Server, in the county in which he/she lives.

The party served has **20 days** (if served in Washington) or **60 days** (if served outside Washington) to file a **Response** to your **Petition**. If you need to serve by mail or publication, you must ask the Court for permission to do so and follow the instructions in the **Order** allowing this alternate type of service.

7. **Complete an Order to DSHS to Release CPS Information (Non-Parent Custody) (FL Non-Parent 407).** Include all required information for every person in your household who is 16 years or older. Give this **Order** to the Superior Court Clerk on the day you plan to see the Judge during the **Ex Parte Calendar**, wait for the Judge or Commissioner to call your case and sign your **Order**.
8. **Obtain a Washington State Patrol Criminal History Record Information (CHRI) for each adult member of the Petitioners' household.** There are two ways to obtain the required records:
- (a) Obtain criminal history immediately online at <http://watch.wsp.wa.gov/>. There is a \$12 fee for each **CHRI**.
  - OR
  - (b) Follow the instructions on the website for mailing in a request and include the required payment of \$38 per **CHRI** search.
9. **Default orders:** If either or both parties do not file a **Response** to your **Petition** or appear within the allowed time, you may complete a:

**Motion for Default**

**FL All Family 161**

**Order on Motion for Default**

**FL All Family 162**

Present these documents to the Judge on the Court's *Ex-Parte* Calendar or on the *Pro Se* Dissolution Calendar when finalizing your case. If the Judge signs an **Order on Motion for Default** you can finalize your case without the other party's participation or signature. If obtaining a default, it is important to remember that all your final documents must match the documents originally filed and served to the Respondent.

10. **Parenting Seminar - LOCAL COURT RULE SPR 94.04**

**(e) Parenting Seminars.** This rule shall apply to all cases in which the Court is being asked to enter a parenting plan for minor children.

- (1) **Mandatory Attendance.** Unless waived as provided herein, within 30 days of filing an appearance, answer or other responsive pleading in an action involving a parenting plan for minor children, both parties shall register for a Court –approved parent education seminar on the effects of family transitions on children, unless the parties have previously attended such a course within the last three years. Each party shall attend the seminar within 60 days of registering.
- (2) **Certificate of Completion.** Upon completion of the seminar, each party shall file with the Court the seminar completion certificate provided by the sponsoring agency or provider. Additionally, a copy of the certificate of completion shall be provided to the Judge at presentation of final documents.
  - **ISLAND COUNTY DOES NOT ACCEPT ONLINE PARENTING SEMINAR CERTIFICATES.**
- (3) **Fees.** Each party attending a seminar shall pay a fee charged by the approved provider and authorized by the Court.
- (4) **Seminar Providers.** The Court shall establish standards for parenting seminars and shall approve seminar providers. A list of approved parenting seminars shall be available from the Court Administrator, Juvenile Court Administrator, or County Clerk. If a parenting seminar is not included on the list, then the Court, upon proper motion, may allow other seminar providers to fulfill this requirement on a case-by-case basis.
  - The Parenting Seminar **“Helping Children through Divorce”** is the only class available on Whidbey Island that satisfies this requirement. There is only one class per month so you must plan accordingly.
  - Sign up for the seminar by calling (360) 279-9222 or (360) 341-1955.
  - Permission to attend another parenting seminar must be obtained from the Court by presenting a **Motion** and **Order** to the Judge at an *Ex Parte* Hearing **BEFORE** you attend your final Hearing.
  - **YOU MUST ATTEND AN “IN-PERSON” SEMINAR; ISLAND COUNTY DOES NOT ACCEPT ONLINE PARENTING SEMINARS.**
- (5) **Waiver and Special Consideration**
  - (A) **Opposing Parties.** In no case shall opposing parties be required to attend a seminar together.
  - (B) **Domestic Violence or Abuse.** Upon a showing of domestic violence or abuse which would not require mutual decision-making pursuant to RCW 26.09.191, or if the Court determines that attendance at a seminar is not in the children’s best interest pursuant to Ch. 26.12 RCW, the Court shall either waive the requirement of completion of the seminar or allow participation in an alternative parenting seminar if available.
  - (C) **Proposed Parenting Plan Required.** Within 14 days of completing the parenting seminar as described above, each parent shall provide the other parent with a Proposed Parenting Plan, if they have not already done so.
  - (D) **Willful Refusal.** Willful refusal to participate in a parenting seminar or willful delay in completing a court-ordered parenting seminar may result in a finding of contempt and imposition of sanctions.

11. **Respondents:** If you are served with documents and do not agree, you must file a:

\_\_\_\_\_ **Response to Non-Parent Custody Petition**

**FL Non-Parent 415**

Responses must be filed within **20 days** (if served within Washington) or **60 days** (if served outside of Washington). File your **Response** with the Superior Court Clerk's office and send a copy "certified mail return receipt requested" to the Petitioner at the address indicated on the **Summons**. You may also want to file and send your own **Proposed Residential Schedule** and **Child Support Worksheets**.

12. **To complete your case, prepare the final documents. Local Court Rules require the Court Facilitator review your final Orders BEFORE your Hearing.** If you obtained an **Order on Motion for Default**, or if you and the other party have reached an agreement, make an appointment with the Court Facilitator. Complete and bring all documents listed below with you to the appointment. If you are finishing by default, make sure all your final orders are filled out exactly the same as the documents the other parties were served in the beginning.

If you and the other parties agree on the final documents, all parties must sign the following final documents:

\_\_\_\_\_ **Findings and Conclusions on Non-Parent Custody Petition**

**FL Non-Parent 430**

\_\_\_\_\_ **Final Non-Parent Custody Order**

**FL Non-Parent 431**

\_\_\_\_\_ **Order on Adequate Cause for Non-Parent Custody**

**FL Non-Parent 417**

If requesting a **Residential Schedule**, complete and bring to the Hearing:

\_\_\_\_\_ **Residential Schedule (Final) (Non-Parent Custody)**

**FL Non-Parent 405**

If requesting **Child Support**, complete and bring to the Hearing:

\_\_\_\_\_ **Child Support Worksheets**

**WSCSS Worksheets**

\_\_\_\_\_ **Child Support Order**

**FL All Family 130**

13. **If either or both Respondents file a Response and do not agree with the Non-Parent Custody, you must schedule an Adequate Cause Hearing.** Complete and file a:

\_\_\_\_\_ **Motion for Adequate Cause Decision (Non-Parent Custody)**

**FL Non-Parent 416**

\_\_\_\_\_ **Note for Motion Calendar**

**Local Form**

*Pick a Monday at 9:30 a.m. allowing at least 12 days notice for the other parties.*

At the **Adequate Cause Hearing** the Judge or Commissioner will decide whether or not adequate cause exists to go forward with a **Non-Parent Custody** case or whether the case should be dismissed.

Bring to the **Adequate Cause Hearing** an:

\_\_\_\_\_ **Order on Adequate Cause for Non-Parent Custody**

**FL Non-Parent 417**

If the Commissioner or Judge finds that adequate cause exists, you and the other parties may proceed with the contested case.

14. **Mediation - LOCAL COURT RULE SPR 94.04**

**(f) Mandatory Mediation.**

- (1) **Requirement for Mandatory Mediation.** In all cases specified in SPR 94.04 (a) with unresolved issues, both parties shall in good faith engage in mediation with a court-approved mediator in an effort to resolve the case, unless waived as set forth herein. Mediation shall be completed at least 60 days prior to the scheduled trial date.
- (2) **Waiver of Mandatory Mediation.** Mediation shall not be required in the following cases:
- (A) **Good Cause.** For good cause shown upon motion and approval by the Court; or
  - (B) **Restraining or Protection Order.** Where a domestic violence restraining order or protection order (excluding *ex parte* orders) involving the parties has been entered by a Court at any time within the previous 12 months;
  - (C) **No Contact Order.** Where a domestic violence no contact order exists pursuant to RCW 10.99;
  - (D) **Domestic Abuse.** Where the Court upon motion finds that domestic abuse has occurred between the parties and that such abuse would interfere with arm's-length mediation.
  - (E) **Order to Require Mediation.** Notwithstanding the foregoing, either party may by motion seek a Court order requiring mandatory mediation in a case where it would not be required if the moving party believes that the parties would be able to mediate their dispute at arm's length under the particular circumstances of the case.
- (3) **Settlement Conference After Mandatory Mediation.** If, after mediation in good faith or where mediation is not required, there remain unresolved issues in any case specified by in SPR 94.04 (a), the parties may participate in a settlement conference pursuant to LCR 16 (d).
- (4) **Effect on Court Proceedings.** Mediation does not stay or otherwise affect the rights and duties of the parties established by statute, court rule, or court order. The Court may enter temporary orders and the parties may conduct discovery prior to or during the mediation process.
- (5) **Cost of Mediation.** Mediators shall be paid by the parties in accordance with the agreement of the parties, or in the absence of agreement, as determined in mediation.
- (6) **Responsibility for Compliance.** The parties shall be responsible for arranging for and completing all mediation requirements established under this rule.
- (7) **Failure to Comply with Mandatory Mediation.** Willful refusal to participate in mediation or willful delay in completing mediation may result in a finding of contempt and imposition of sanctions.
- (8) **Approval of Mediators.** Mediators performing mediation services pursuant to this rule must fulfill certain minimum qualifications established by the Court. The Court Administrator shall maintain a list of such minimum qualifications for distribution to the public. In order to fulfill the mediation requirements of this rule, the parties must use the services of a Court-approved mediator. The Court Administrator shall maintain a list of approved mediators, either persons or agencies, for distribution to the public. The list shall contain the following information: each mediator's name, organization, if any, address and telephone number, and fee schedule.
- <https://www.islandcountywa.gov/superiorcourt/pages/mandatorymediation.aspx>
- (9) **Selection of Mediator; Right of Mediator to Decline.** The parties may either agree to a mediator from the Court-approved list or the mediator will be determined by use of a strike list. A mediator has the right to decline to serve in a particular case. If a mediator declines to serve, the parties shall select a different mediator, using the same selection process by which the preceding mediator was selected.

- (10) **Authority of Mediator.** The mediator has the authority to determine the time, place, manner, and duration of mediation. In appropriate cases, the mediator shall have the authority to terminate the mediation prior to completion.
- (11) **Attendance at Mediation.** The parties shall personally attend all mediation sessions, unless the mediator permits telephonic or other attendance. The mediator shall have the authority to require other persons to attend.
- (12) **Declaration of Completion of Mediation.** Within seven (7) days of completion of mediation, a declaration that mediation has been completed shall be filed with the Court by the mediator. The mediator shall advise counsel and the parties of the results of mediation in writing. The mediator shall advise the Court only whether an agreement has been reached on some or all of the issues.
- (13) **Confidentiality. (See RCW 5.60.070).** The work product of the mediator and all communications during the mediation shall be privileged and confidential and not subject to compulsory disclosure. The mediator shall not appear to testify in any Court proceedings.

15. **Schedule your Hearing.**

- Call the Superior Court Clerk's Office **(360) 679-7359** and ask to be put on the ***Pro Se Agreed Dissolution Calendar***. All family law cases completed by either agreement or by default are heard on the *Pro Se* Dissolution Calendar, Wednesdays at 8:30 a.m.
- **Take all your prepared orders to the final hearing.**

16. **If Mediation does not resolve your contested issues and if you cannot come to an agreement on your own, fill out and file a *Note for Trial Setting* (local form).** The ***Note for Trial Setting*** is your request to have a ***Trial Date*** assigned to your case.

- On the line that says "Date requested for trial assignment" pick a Monday that is at least two weeks away. You will not have to appear in court on that Monday, it is just the date that the Court Administrator will be reviewing your file and assigning you a ***Trial Date*** and a ***Readiness Hearing***.
- If there are dates that you will not be available for trial, fill out and file a ***Notice of Conflict Dates*** (local form) when you file your ***Note of Trial Setting***. **You must serve the other party with a copy of the *Note for Trial Setting* and any *Notice of Conflict Dates*.**
- The Court will send you and the other party notice of your ***Readiness Hearing*** and your ***Trial Date***.
- **If you are not represented by an attorney, you must meet with the Court Facilitator to review your final orders PRIOR to trial.** Arrange an appointment at least 2 weeks before your Hearing.
- **You must confirm your trial with Court Administration by not later than 12 noon two (2) days prior to the trial or it will be stricken. Call (360) 679-7361 to confirm.**

17. ***Courtesy (Working) Copies.*** Approximately one (1) week before your trial date, it is requested that you provide the Judge with a "courtesy copy" of the documents you will be presenting at trial.

**LCR 5 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.**

(3) ***Courtesy Copies for Judges.*** Courtesy copies of pleadings and other papers shall be provided to the Court Administrator's office for the Judge assigned to the case at the same time as such pleadings and other papers are required to be served on the opposing party. Such courtesy copies shall have the words "Judge's Courtesy Copy" in the upper right hand corner of the first page, the Judge's name, and the date and time of the Hearing. Courtesy copies are discarded after ten (10) days from the assigned Hearing date. It is the responsibility of the parties or counsel to provide new courtesy copies to the Judge thereafter as provided herein.



18. **There are specific requirements and procedures related to trial preparation.** It is strongly suggested that you purchase a copy of Island County's ***Local Court Rules*** at the Court Administrator's Office, or download a copy from the Island County Superior Court website. Be sure you are familiar with the rules related to trials and that you follow the required procedures. **This outline does not cover trial preparation. You may want to seek legal advice from an attorney.**
19. **Go to your trial with all the completed documents listed in #12 above.**

**IMPORTANT:** This checklist is not a substitute for legal advice. Before starting any legal action, it is always wise to consult an Attorney regarding your rights and responsibilities. Many Attorneys offer consultations. The Court Facilitator cannot give legal advice. **ONLY AN ATTORNEY CAN GIVE LEGAL ADVICE.**

### ***Island County Superior Court Ex-Parte Calendar***

Mondays at 9:30 a.m.

Tuesdays through Fridays at 1 p.m.

You must check in with the Superior Court Clerk's Office at least 45 minutes before the court time.

### ***Island County Pro-Se Dissolution Calendar***

Wednesdays at 8:30 a.m.

You must check in with the Superior Court Clerk's Office no later than 8:15 a.m.

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### **HELPFUL WEBSITES:**

<b><a href="http://www.islandcounty.net/superiorcourt">www.islandcounty.net/superiorcourt</a></b>	(general information, local forms and rules)
<b><a href="http://www.nwjustice.org">www.nwjustice.org</a></b>	(general information and links to other resources)
<b><a href="http://www.washingtonlawhelp.org">www.washingtonlawhelp.org</a></b>	(general information and sample forms)
<b><a href="http://www.courts.wa.gov">www.courts.wa.gov</a></b>	(forms and other information)
<b><a href="http://www.dshs.wa.gov/doc">www.dshs.wa.gov/doc</a></b>	(information on child support & calculator)

### **HELPFUL PHONE NUMBERS:**

<b>Island County Court Facilitator</b>	(360) 678-7981
<b>Island County Superior Court Clerk's Office</b>	(360) 679-7359
<b>Island County Superior Court Administration</b>	(360) 679-7361
<b>CLEAR Referral Line for Volunteer Lawyer Program</b>	(888) 201-1014

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## **Format and Style Rules for Mandatory Forms**

**Developed Pursuant to RCW 26.18.220**

**(May 2016)**

***For complete information, consult the Family Law Format and Style Rules (May 2016) at [www.courts.wa.gov/forms](http://www.courts.wa.gov/forms).***